



FEMA 9580.4
January 19, 2001

PUBLIC ASSISTANCE PROGRAM

**FACT SHEET
DEBRIS OPERATIONS - CLARIFICATION
EMERGENCY CONTRACTING VS. EMERGENCY WORK**

SUMMARY: Contracting for debris operations, even though it is “emergency work” in FEMA operations, does not necessarily mean the contracts can be awarded without competitive bidding. Applicants should comply with State laws and regulations, but should be aware that non-competitive contracting is acceptable ONLY in rare circumstances where there can be no delay in meeting a requirement. In general, contracting for debris work requires competitive bidding. The definition of “emergency” in contracting procedures is not the same as FEMA’s definition of “emergency work”.

DISCUSSION: There appears to be some confusion regarding the awarding of some contracts, especially for debris, without competitive bidding. The reason cited for such actions is that the contract is for emergency work, and competitive bidding is not required.

Part 13 of 44 CFR is entitled “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”. These requirements apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or regulations authorized in accordance with the exception provisions of Section 13.6. In essence, these regulations apply to all Federal grants awarded to State, tribal and local governments.

Non-competitive proposals awarded under emergency requirements are addressed as follows:

“Procurement by non-competitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:

(A)

(B) The public exigency or emergency of the requirement will not permit a delay resulting from competitive solicitation.” (44 CFR Part 13.36(d)(4)(1)(B)).”

Staff of the Office of General Counsel and the Office of the Inspector General have expressed concern that contracts are being awarded under this section without an understanding of the requirement. Simply stated, non-competitive contracts can be awarded only if the emergency is such that the contract award **cannot be delayed by the amount of time required to obtain competitive bidding.**



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DEBRIS REMOVAL APPLICANT'S CONTRACTING CHECKLIST

Avoidance Checklist

- DO NOT:** Award a debris removal contract on a sole-source basis.
- DO NOT:** Sign a contract (including one provided by a contractor) until it has been thoroughly reviewed by your legal representative.
- DO NOT:** Allow any contractor to make eligibility determinations, since only FEMA has that authority.
- DO NOT:** Accept any contractor's claim that it is "FEMA certified." FEMA does not certify, credential, or recommend debris contractors.
- DO NOT:** Award a contract to develop and manage debris processing sites unless you know it is necessary, and have contacted the State for technical assistance concerning the need for such operations. Temporary debris storage and reduction sites are not always necessary.
- DO NOT:** Allow separate line item payment for stumps 24 inches and smaller in diameter; these should be treated as normal debris.
- DO NOT:** "Piggyback" or utilize a contract awarded by another entity. Piggybacking may be legal under applicable state law; however, the use of such a contract may jeopardize FEMA funding.
- DO NOT:** Award pre-disaster/stand-by contracts with mobilization costs or unit costs that are significantly higher than what they would be if the contract were awarded post-disaster. Such contracts should have variable mobilization costs depending upon the size of the debris work that may be encountered.



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DEBRIS REMOVAL APPLICANT'S CONTRACTING CHECKLIST

Contract Provisions Checklist - Continued

All contracts must contain/reflect the following provisions:

- Requirement that all contract amendments and modifications be in writing.
- Requirement that contractor obtain adequate payment and performance bonds and insurance coverage.

Pre-Disaster and Stand-By Contracts Checklist

- It is recommended that you pre-qualify contractors prior to an event and solicit bid prices from this list of contractors once an event has occurred.
- The solicitation for pre-qualifying contractors must adequately define in the proposed scope of work all the potential types of debris, typical haul distances, and size of events for which a contract may be activated.
- To ensure reasonable debris removal costs, award debris removal contracts based on unit prices (volume or weight).
- If the contract is awarded on a time and material basis, it should be limited to no more than 70 hours of actual clearance and removal operations.
- After the initial 70-hour period, payment should be on a unit price basis (volume or weight).



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DEBRIS REMOVAL APPLICANT'S CONTRACTING CHECKLIST

Contract Provisions Checklist

All contracts must contain/reflect the following provisions:

- All payment provisions must be based on unit prices.
- No payments may be based on time and material costs unless limited to work performed during the first 70 hours of actual work following a disaster event.
- That payment will be made only for debris that FEMA determines eligible, referencing FEMA regulations and Public Assistance guides and fact sheets. (This is an optional provision to protect the applicant, and is used only following a major disaster declaration.)
- An invoice provision requiring contractors to submit invoices regularly and for no more than 30-day periods.
- A "Termination for Convenience" clause allowing contract termination at any time for any reason.
- A reasonable limit on the period of performance for the work to be done.
- A subcontract plan including a clear description of the percentage of the work the contractor may subcontract out and limiting use of subcontractors to only those you approve.
- The preference that the contractor use mechanical equipment to load and reasonably compact debris into the trucks and trailers.
- The requirement that the contractor provide a safe working environment, including properly constructed monitoring towers.
- Option of a unit price for extracting from ground and removing FEMA-eligible stumps (only for stumps with diameters larger than 24 inches, measured 24 inches above the ground, and with 50% or more of the root ball exposed), or including all stumps in the unit price.



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DEBRIS REMOVAL APPLICANT'S CONTRACTING CHECKLIST

Overview

To be eligible for reimbursement under the Public Assistance Program, contracts for debris removal must meet rules for Federal grants, as provided for in 44 CFR Part 13.36 *Procurement* (http://www.access.gpo.gov/nara/cfr/waisidx_04/44cfr13_04.html). Public Assistance applicants should comply with their own procurement procedures in accordance with applicable State and local laws and regulations, provided that they conform to applicable Federal laws and standards identified in Part 13. The following guidance is provided to assist Public Assistance applicants in the procurement process.

Contracting Process Checklist

- Use competitive bidding procedures. Complete and document a cost analysis to demonstrate price reasonableness on any contract or contract modification where adequate price competition is lacking, as detailed in 44 CFR 13.36(f).
- Provide a clear and definitive scope of work and monitoring requirements in the request for proposals/bids. Use acceptable emergency contracting procedures that include an expedited competitive bid process only if time does not allow for more stringent procedures.
- Require bidders to provide copies of references, licenses, financial records, and proof of insurance and bonding.
- Obtain review from your legal representative of your procurement process and any contract to be awarded to ensure they are in compliance with all Federal, State, and local requirements.
- Document procedures used to obtain/award contracts (procurement information, bid requests and tabulations, etc).
- Use load ticket requirement to record with specificity (e.g., street address) where debris is picked up and the amount picked up, hauled, reduced and disposed of.

FEMA will, when requested by applicants, assist in the review of debris removal contracts. However, such a review does not constitute approval.

FEMA's division of disaster work into "emergency" and "permanent" is generally based on the period of time during which the work is to be performed, and not on the urgency of that work. Therefore, the award of non-competitive contracts cannot be justified on the basis of "emergency work", as defined by FEMA.

In some situations, such as clearing road for emergency access (moving debris off the driving surface to the shoulders or rights-of-way), or removal of debris at a specific site, awarding a non-competitive contract for site-specific work may be warranted; however, normally, non-competitive bid awards should not be made several days (or weeks) after the disaster or for long-term debris removal. Obviously, the latter situations do not address a public exigency or emergency which "will not permit a delay resulting from competitive solicitation".

Regarding competitive solicitations, applicants can use an expedited process for obtaining competitive bids. In the past, applicants have developed a scope-of-work, identified contractors that can do the work, made telephone invitations for bids, and received excellent competitive bids. Again, applicants must comply with State and local bidding requirements.

Please remind applicants that no contractor has the authority to make determinations as to eligibility, determinations of acceptable emergency contracting procedures, or definitions of emergency work. Such determinations are to be made by FEMA.